

FISCAL NOTE

SB 1502 - HB 1572

April 9, 2001

SUMMARY OF BILL:

- Makes health maintenance organizations liable for damages for harm to an insured enrollee when the managed care entity fails to exercise ordinary and reasonable care.
- Requires a plan enrollee to exhaust internal HMO grievance procedures and external review appeals prior to filing a lawsuit. The bill makes the independent review process binding on the HMO but not the enrollee.
- Allows expedited independent review procedures in cases of life threatening situations. A favorable independent review decision for the HMO creates a presumption that the HMO exercised reasonable care but can be rebutted with clear and convincing evidence. Non-economic damages are limited to \$300,000 and punitive damages are not allowed.
- Creates no new liability for an employer or a group purchasing association. Attorney fees are limited to one-third of the total award. The bill allows a cause of action against a TennCare HMO.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - Exceeds \$500,000

Increase Local Govt. Expenditures* - Exceeds \$100,000

Other Fiscal Impact - Increase Federal Expenditures - Exceeds \$1,000,000

Estimate assumes that:

- The amount of increased cost to the state in the TennCare program and the state employees health insurance program cannot be determined but can be reasonably estimated to at least exceed \$500,000. Cost estimates of similar legislation vary greatly. For information purposes, the Congressional Budget Office estimated in a review of the Managed Care Improvement Act of 2000 that the right to sue (ERISA preemption) would increase premiums by about 1.0 percent. A study by Muse and Associates estimated the increase at about 0.2 percent. A study of proposed California legislation by Price Waterhouse for the Kaiser Foundation estimated that such legislation could lead to premium increases of 0.1 to 0.4 percent. The Barents Group of KPG Peat Marwick in a report for the American Association of Health Plans estimated increased managed care plans' cost of 2.7% to 8.6%. As

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an example, an increase of 0.1 percent to 1 percent in TennCare cost would result in an increase of approximately \$2.7 million to \$27 million in state and federal spending for MCO and BHO services.

- Managed care organizations contracting with the state will incur increased cost from exposure to additional liability. It is reasonable to assume that such cost would ultimately be passed on to the state by TennCare managed care organizations and to the state and local government employee health insurance plans by contract administrators of those plans.
- Although the state is excluded from liability as an employer, it appears that health care contractors administering the state employees health plan would not be excluded from liability.

Factors that may impact cost include:

- Limitations on tort awards, attorney fees and prohibiting punitive damages, as provided in the bill, limit the amount of liability to insurance companies, however this still represents an increased level of liability not present in the current insurance market.
- Requiring internal and external appeal procedures to be used prior to court action in most cases should reduce the number of potential lawsuits. However, the number of appeals may increase, which could result in an increase in administrative costs to managed care organizations administering governmental health care plans. In addition there is the potential for increased medical cost to the extent that additional health care services are provided as a direct result of the appeals process.
- Higher exposure to liability may result in reduced availability of health insurance for people with catastrophic medical conditions potentially increasing the uninsurable population in the TennCare program.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James A. Davenport, Executive Director